

**Amendments to the Drawings:**

Attached are nine (9) replacement sheets of formal drawings containing Figs. 1-21. These drawings replace the previously submitted informal drawings. Additionally, Fig. 20 has been amended to show second retaining member 951a.

### **REMARKS**

Claims 1-20 are currently pending. As a result of the above amendments, Claims 1, 8, 12 and 19 have been amended, and Claims 21-23 have been added. Therefore, Claims 1-23 are at issue in this Application.

### **Claim Rejections - - Section 102**

In paragraph three of the Office Action, Claim 1 was rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,994,411 to Elfelt ("Efelt"). Applicants respectfully traverse this rejection.

Amended independent Claim 1 is directed to a lid for a container holding a flowable substance, and requires among things, a body having a top wall defining a substantially circular periphery and a recessed central portion radially inward of the circular periphery, the body further having *a drink opening positioned in the top wall*, the body further having *a retaining element positioned in the top wall* and spaced about 90 degrees from the opening, the body further having a mounting portion to mount the body to the container.

Efelt does not anticipate amended independent Claim 1 because it does not disclose all limitations of the Claim. *Ex Parte Levy*, 17 U.S.P.Q. 2d 1461 (BPAI 1990); *In re Lange*, 209 U.S.P.Q. 288 (CCPA 1981) (in order to anticipate, the reference must describe or disclose all of the limitations of the claims). Specifically, Elfelt does not disclose or suggest either: (i) a drink opening in the top wall, or (ii) a retaining element positioned in the top wall. As shown in Fig. 2 of Elfelt, the resultant drink opening is positioned in both the mounting portion 15 and the central portion 14. The Examiner appears to have construed the mounting portion 15 as the claimed top wall; however, that construction precludes Elfelt from having both the top wall and the mounting portion as required by Claim 1. Further, Elfelt's retainer slits 27, 28 are located in the central portion 14, not in the top wall as required by the Claim. The central portion 14 should not be construed as the claimed top wall since it is the lowermost structure of Elfelt's lid 10, and such construction runs contrary to how one of skill in the art of lid design would view Elfelt. For each of these reasons, Elfelt does not anticipate Claim 1 and the Claim is allowable.

In paragraph four of the Office Action, Claims 8, 12, 13 and 16 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,202,469 to DeParales et al. ("DeParales"). Applicants respectfully traverse this rejection.

Amended independent Claim 8 is directed to a lid for a container holding a flowable substance, and requires among things, a body having a top wall defining a substantially circular periphery, the body further having *a drink opening positioned entirely within the top wall*, the body further having *a retaining element positioned within the top wall* wherein the retaining element is spaced approximately 45 degrees from the opening, the body further having a mounting portion to mount the body to the container.

DeParales does not anticipate amended independent Claim 8 because it does not disclose all limitations of the Claim. *Ex Parte Levy*, 17 U.S.P.Q. 2d 1461 (BPAI 1990); *In re Lange*, 209 U.S.P.Q. 288 (CCPA 1981). First, DeParales does not disclose or suggest a drink opening positioned entirely within the top wall. Referring to Figs. 1-3 of DeParales, the tear segment 17 is pivoted inward to define a drink opening 16 formed in both the mounting rim 11 and the unlabeled central portion. The ribs 36, 37 should not be construed as forming a portion of the top wall since they reside below the mounting rim 11 (see Fig. 3). Second, DeParales neither discloses nor suggests a retaining element positioned in the top wall of the lid body as required by Claim 8. Instead, DeParales' retaining slot 19 is located in the central portion, radially inward of the mounting rim 11. In the event that the mounting rim 11 is construed as the top wall, that construction fails since the DeParales lid would lack each of the following: the drink opening positioned entirely within the top wall; the retaining element positioned in the top wall; and, the mounting portion. For each of these reasons, Claim 8 is not anticipated by and is allowable over DeParales.

Amended independent Claim 12 is directed to a lid for a container holding a flowable substance, and requires among things, a body having an annular top wall and a recessed central portion, the body having *a drink opening positioned entirely in the annular top wall*, the body further having *a retaining element positioned in the annular top wall* and wherein the retaining element and the opening are in an angular positional relationship, the body further having a mounting portion to mount the body to the container.

DeParales does not anticipate amended independent Claim 12 because it does not disclose all limitations of the Claim. *Ex Parte Levy*, 17 U.S.P.Q. 2d 1461 (BPAI 1990); *In re Lange*, 209 U.S.P.Q. 288 (CCPA 1981). Consistent with that explained above for Claim 8, DeParales does not disclose or suggest either: (i) a drink opening positioned entirely within the top wall, or (ii) a retaining element positioned in the top wall. Accordingly, DeParales does not anticipate Claim 12 and the Claim is allowable.

Claims 13 and 16 depend from independent Claim 12 and thereby require all of the limitations of that Claim. For at least the reasons stated above, Claims 13 and 16 are not anticipated by DeParales and are allowable.

In paragraph five of the Office Action, Claims 12, 13 and 16-18 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,949,865 to Turner ("Turner"). Applicants respectfully traverse this rejection.

Turner does not anticipate amended independent Claim 12 because it does not disclose all limitations of the Claim. *Ex Parte Levy*, 17 U.S.P.Q. 2d 1461 (BPAI 1990); *In re Lange*, 209 U.S.P.Q. 288 (CCPA 1981). Specifically, Turner fails to disclose or suggest a drink opening positioned entirely within the top wall. As shown in Fig. 2 of Turner, the drink opening 22 is located in the lower first part 12 of the central portion 16, which is radially inward and below the rim 18 that defines the top structure of the lid 10. Given the dimensions of the drink opening 22, it cannot be repositioned into the smaller dimensioned rim 18. Consequently, Turner does not anticipate Claim 12 and the Claim is allowable.

Claims 13 and 16 depend from independent Claim 12 and thereby require all of the limitations of that Claim. For at least the reasons stated above, Claims 13 and 16 are not anticipated by Turner and are allowable.

Claims 17 and 18 depend from independent Claim 12 and further require a base portion, a connector arm, and a plug, the connecting arm located between the base portion and the plug, *the base portion being connected to the mounting portion*. Referring to Figs. 1-3 of Turner, the closure member 28 is operably connected to a central support 26 extending vertically from the central portion 16, not the mounting rim 18. For this reason and the reasons stated above, Claims 17 and 18 are not anticipated by Turner and are allowable.

### **Claim Rejections - - Section 103**

In paragraph seven of the Office Action, Claims 1-20 were rejected under 35 U.S.C. §103(a) as being obvious over the combination of U.S. Patent No. 4,703,873 to Geren ("Geren") and Japanese Patent No. 2000-159254 ("JP '254"). Applicants respectfully traverse this rejection.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference(s) must teach or suggest all of the claim limitations. The examiner bears the initial burden on factually supporting any prima facie conclusion of obviousness. *See* MPEP § 2142; *In re Vaeck*, 20 USPQ.2d 1438 (Fed. Cir. 1991).

Applicants submit that the Section 103 rejections should be reversed because the combination of Geren and JP '254 does not disclose or suggest all limitations of the claims.

#### **A) Claims 1-7**

The combination of Geren and JP '254 does not render amended independent Claim 1 obvious, because the combination does not teach or suggest a body having a top wall defining a substantially circular periphery and *a recessed central portion radially inward of the circular periphery*, the body further having *a drink opening positioned in the top wall*, the body further having *a retaining element positioned in the top wall and spaced about 90 degrees from the opening*, the body further having a mounting portion to mount the body to the container. Regarding Geren, Figs. 2 and 3 therein show that the lid body 14 lacks a recessed central portion and the lid body 14 should not be construed as the claimed top wall since it resides below the vertically extending flange 28. Geren's flange 28 cannot be construed as the top wall since it does not define a substantially circular periphery and there is no recessed central portion radially inward of the periphery. Regarding JP '254, the Examiner focuses on Fig. 7 to establish the presence of the retaining plug 21. While Applicants acknowledge the retaining plug 21, JP'254 lacks a drink opening positioned in a top wall since the opening 20a is located at the tip of the vertical spout 20. The uppermost wall of JP '254's spout 20 cannot be construed as Claim 1's top wall because there is no recessed central portion radially inward of the top wall periphery. Further, JP '254's retaining plug 21 is positioned near the base of the spout 20, not in the top

wall of the spout 20. Lastly, JP '254 lacks any figure or disclosure suggesting that the retaining plug 21 is angularly spaced 90 degrees from the drink opening 20a, as recited in Claim 1. For these reasons, the combination of Geren and JP '254 does not disclose or suggest all limitations of amended Claim 1 and as a result, Claim 1 and dependent Claims 2-7 are allowable.

**B) Claims 8-11**

The combination of Geren and JP '254 does not render amended independent Claim 8 obvious, because the combination does not teach or suggest a body having a top wall defining a substantially circular periphery, the body further having *a drink opening positioned entirely within the top wall*, the body further having *a retaining element positioned within the top wall wherein the retaining element is spaced approximately 45 degrees from the opening*, the body further having a mounting portion to mount the body to the container. First, neither Geren nor JP '254 discloses or suggests a body having a top wall defining a substantially circular periphery with both an opening and retaining element positioned within the top wall. Referring to Fig. 3, Geren's lid body 14 cannot be construed as the claimed top wall since it resides below the extending flange 28. While the upwardly extending flange 28 has a top wall, it lacks both the required substantially circular periphery and the retaining element. JP '254 is even further afield. Referring to Fig. 7 of JP '254, if the upper wall of the spout 20 is construed as the claimed top wall, JP '254 lacks the claimed retaining element within the top wall. Second, neither Geren nor JP '254 discloses or suggests a retaining element spaced 45 degrees from the opening in the top wall. As explained in the preceding section, JP '254's lack of a figure or disclosure relating to angular positioning precludes any determination of the angular positioning between the retaining plug 21 and drink opening 20a. For these reasons, the combination of Geren and JP '254 does not disclose or suggest all limitations of amended Claim 8 and as a result, Claim 8 and dependent Claims 9-11 are allowable.

**C) Claims 12-18**

The combination of Geren and JP '254 does not render amended independent Claim 12 obvious, because the combination does not teach or suggest a body having an annular top wall and *a recessed central portion*, the body having *a drink opening positioned entirely in the annular top wall*, the body further having *a retaining element positioned in the annular top wall and wherein the retaining element and the opening are in an angular positional relationship*.

Neither Geren nor JP '254 discloses or suggests both a drink opening and retaining element positioned in the annular top wall of the body. Geren's top wall defined by the flange 28 has a triangular configuration, not annular, and lacks the claimed retaining element. Geren further lacks a recessed central portion. JP '254 lacks the claimed top wall and if the upper wall of the spout 20 is construed as the claimed top wall, JP '254 lacks the claimed retaining element. Furthermore, JP '254 lacks the recessed central portion. Referring to Fig. 7, the horizontal wall between the spout 20 and the retaining plug 21 cannot be construed as the claimed top wall since it is positioned below both of these structures. Lastly, and as explained above, neither reference discloses a retaining element that is in an angular positional relationship with the drink opening in the top wall. For these reasons, the combination of Geren and JP '254 does not disclose or suggest all limitations of amended Claim 12 and as a result, Claim 12 and dependent Claims 13-18 are allowable.

**D) Claims 19 and 20**

The combination of Geren and JP '254 does not render amended independent Claim 19 obvious, because the combination does not teach or suggest a body having a top wall defining a substantially circular periphery, the body further having *a drink opening positioned entirely in the top wall*, the body further having *a first retaining element and a second retaining element wherein both retaining elements are positioned in the top wall*, the body further having a mounting portion adapted to mount on the container. Neither Geren nor JP '254 discloses or suggests a body having a top wall defining a substantially circular periphery with a drink opening and two retaining elements positioned within the top wall. Referring to Fig. 3, Geren's lid body 14 cannot be construed as the claimed top wall since it resides below the extending flange 28. While the upwardly extending flange 28 has a top wall, it lacks both the required substantially circular periphery and the retaining elements. Referring to Fig. 7 of JP '254, if the uppermost wall of the spout 2 is construed as the claimed top wall, JP '254 lacks the claimed retaining elements within the top wall since the retaining plug 21 is positioned near the base of the spout 20. Second, neither Geren nor JP '254 discloses or suggests a two distinct retaining elements as required by the Claim. Claim 19's requirement of two distinct retaining elements is simply not shown by either cited reference. For these reasons, the combination of

Geren and JP '254 does not disclose or suggest all limitations of amended Claim 19 and as a result, Claim 19 and dependent Claim 20 are allowable.

**Double Patenting Rejection**

In paragraphs nine through thirteen of the Office Action, Claims 1, 5-8, 12, and 16 were rejected under the judicially created doctrine of obviousness type double patenting over certain claims in U.S. Patent No. 6,679,397. Herewith, Applicants have provided a terminal disclaimer to resolve the above-rejections.

In paragraphs fourteen through sixteen, Claims 5, 16 and 18 were provisionally rejected under the doctrine of obviousness type double patenting over certain claims in U.S. Application No. 10/641,498 ("498 Application")<sup>1</sup>. Applicants traverse these rejections on the grounds that the lid required in each of Claims 5, 16 and 18 is not obvious to one of skill in the art when compared to the lid required in the cited claims in the '498 Application. MPEP §804 (the factual inquiries applied for evaluating obviousness under Section 103 are to be employed when making an obvious-type double patenting analysis).

Regarding paragraph fourteen, the lid structure required by amended Claim 5 of the present Application is not obvious when compared to the lid structure required by either of Claims 3 and 11 of the '498 Application. There are numerous structural distinctions between the Claims, for example the top wall and drink opening structures, that precludes obviousness. Regarding paragraph fifteen, the lid structure required by amended Claim 16 of the present Application is not obvious when compared to the lid structure required by either of Claims 1 and 16 of the '498 Application because there are numerous structural distinctions between the Claims, including the top wall, the central portion, and the drink opening. Regarding paragraph sixteen, the lid structure required by amended Claim 18 of the present Application is not obvious when compared to the lid structure required by either of Claims since there are numerous structural distinctions between the Claims, including the top wall, the central portion, and the drink opening. For at least these reasons, Claims 5, 16 and 18 are not obvious in light of the '498 Application and the provisional double patenting rejection should be withdrawn.

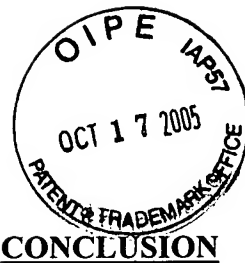
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<sup>1</sup> In the '498 Application, a first Office Action has been received, however, Applicants are presently considering amending the claims. Also, Applicants' counsel has scheduled an interview to discuss the claims in the '498 Application and the Office Action.



**Added Claims**

Applicants have added Claims 21-23, all of which are supported by the specification. Applicants submit that these Claims are allowable since the cited art neither discloses or suggest the lid body structure required by Claims 21-23.

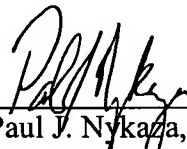


In view of the foregoing, Applicants believe that Claims 1-23 are in condition for allowance, and respectfully request early notice of the same. Applicants request that the Examiner call the undersigned attorney with any questions concerning this Reply, or if it will expedite the progress of this Application.

Respectfully submitted,

Dated: October 14, 2005

By: \_\_\_\_\_

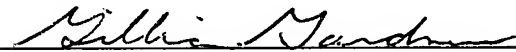
  
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on October 14, 2005



Gillian Gardner/233110